

REMARKS

Claims 3 and 4 have been amended; claims 5 and 6 have been cancelled without prejudice; and claim 7 has been added. Claims 1- 4 and 7 are presented for further prosecution on the merits.

Applicant respectfully requests reconsideration of the application in view of the above amendments and the following remarks.

I. SUMMARY OF OFFICE ACTION

The Examiner rejected claims 1-3 under 35 U.S.C. §102(e) as being anticipated by Knappe et al. (U.S. Pat. No. 6,537,496).

The Examiner rejected claims 4 and 5 under 35 U.S.C. §102(e) as being anticipated by Roberts, Jr. (U.S. Pat. No. 4,326,000).

The Examiner rejected claim 6 under 35 U.S.C. §102(b) as being anticipated by Porter et al. (U.S. Pat. No. 5,709,838).

II. APPLICANT'S INVENTION

Applicant's invention discloses the flexing or bending of a test strip in order to improve the flow of the substance in which the test strip is dipped.

III. TRAVERSAL OF THE ART REJECTIONS

A rejection under §102 requires that each and every element of the claimed invention be taught by the cited reference. Since a patent must describe and enable an invention to one skilled in the art, an anticipatory patent by definition must place the claimed invention into the public domain. Clearly, Knappe (the '496 patent), Roberts (the '000 patent) and Porter (the '838 patent) do not disclose each and every element of the claimed invention as amended and, therefore, cannot anticipate Applicant's invention.

Knappe discloses an overlay that attaches to a test strip and covers the analyte-sensitive fields of the test strip in order to ensure uniform distribution of a sample over the analyte-sensitive fields.

Although Knappe shows a test strip being flexed, Knappe indicates that the flexing does not have a positive benefit because of the compressing of the "inner" side of the test strip and the "stretching" of the outer side of the test strip. According to Knappe, since test strips are comprised of multiple layers that are stacked on top of one another (i.e., like a sandwich), the layer on the inner side forms folds that pull away from inner layers of the test strip. (See Knappe at column 4, lines 51 - 67.)

Knappe does not disclose the positive effects of bending or elongating the micro-pores of a test strip, nor does Knappe disclose the use of pressure points as claimed in Applicant's amended claim 3. Clearly, Knappe does not disclose "each and every feature" of Applicant's claimed invention. Therefore, Knappe cannot anticipate Applicant's amended claims 1 and 3 (or claim 2 which depends directly from claim 1).

Applicant discloses the multi-layer structure of test strips in his specification. However, Applicant's invention takes advantage of the micro-pores that exist in test strips. Knappe does not address the elongation of the micro-pores in the test strips. Moreover, since Knappe views flexing/bending of the test strip (which creates the aforementioned folds) as a negative effect, Knappe teaches directly away from Applicant's invention. Knappe's overlay is designed to improve the distribution of the liquid over the test strip because Knappe discloses what he believes are negative effects of bending the test strip. Therefore, Knappe cannot make obvious Applicant's invention as claimed.

Roberts discloses an absorbent, unitary, laminate-like sheet material. As such, Roberts does not teach the use or manufacture of test strips; does not teach flexing of a test strip; and does not teach the effects of elongating the micro-pores in a test strip. Also, Roberts does not disclose the use of pressure points as expressly claimed in Applicant's amended claim 3. Therefore, Roberts cannot anticipate Applicant's invention because it does not "disclose each and every element" claimed by Applicant as required by the statute.

In addition, Roberts' invention deals with the making of toilet paper. (The assignee, Scott Paper Company, was one of the largest manufacturers of toilet paper in the world before being taken over by a competitor.) The manufacture of toilet paper (in which no chemicals are applied to the paper) is in a completely different field than the manufacture of test strips which are chemically treated in order to detect the presence or absence of specific compounds. Therefore, not only does Roberts not anticipate, it cannot make obvious Applicant's claimed invention.

Furthermore, Roberts discloses the manufacture of a fibrous web within the sheet material. When the fibers are forced closer together (i.e., decreasing the size of the openings between fibers), Roberts discloses an increase in the capillary action of moisture drawn into the web. (See Roberts Column 16, lines 24 - 36.) Therefore, Roberts does not disclose micro-pores, nor does it disclose elongating micro-pores. Roberts' invention is completely unrelated to Applicant's invention because Roberts wants to close openings between fibers; in contrast, Applicant wants to elongate micro-pores. As such, Roberts cannot make obvious Applicant's claimed invention.

Also, Roberts does not care which direction absorption increases; in fact, since Roberts invention is for use with toilet paper, Roberts desire is to increase absorption in all directions. Applicant's amended claim 4 claims an improvement of flow in primarily one direction. The reason Applicant desires flow primarily in one direction is to wick the substance being tested up the test strip in order to deliver the substance to the chemically-enhanced portion of the test strip that detects the presence or absence of specific compounds. Again, Roberts can not make obvious Applicant's amended independent claims 1 and 4 or any claim that depends directly or indirectly from the independent claims. Further, Roberts disclosure does not even touch on the use of pressure points as expressly claimed in Applicant's amended claim 3.

Applicant has cancelled claim 6 without prejudice and added new claim 7 which includes the "tapering" limitation. However, since claim 7 is dependent from claim 4, Porter does not disclose the elongation of micro-pores and, in particular, elongation in the direction of liquid flow. Therefore, Porter cannot anticipate nor make obvious Applicant's claimed invention.

IV. CONCLUSION

In view of the above, Knappe, Roberts and Porter by themselves, or in combination, cannot anticipate, nor can they make obvious, Applicant's claimed invention. Applicant respectfully requests reconsideration of the present application in view of the above amendments and remarks, and the issuance of a notice of allowance for claims 1-4 and 7.

Should the Examiner have any questions regarding this application, he is invited to telephone the undersigned in order to expedite the prosecution of this application.

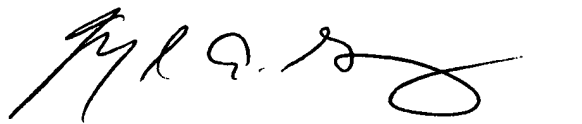
The undersigned attorney has moved his offices. The new contact information including a new telephone number is indicated below and on the first page of this Reply. The undersigned attorney has notified both the Office of Discipline and the office that handles the issuance of

Customer Numbers of this address change. It is respectfully requested that the PTO update its records for this matter and forward all future communications to the new address.

Respectfully submitted,

Kenneth Alley

Date: 20 MAY 2004



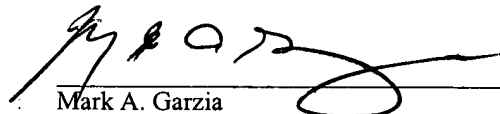
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CERTIFICATE OF MAILING

I hereby certify that this communication, along with any paper or fee indicated as being enclosed, is being deposited with the United States Postal Service as First Class Mail, postage prepaid, in an envelope addressed to Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on the date indicated below.

20 MAY 2004
Date


Mark A. Garzia